

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.23139 of 2005

07.11.2005

Between:

1. Soma Narayana, S/o.S.Veeraiah, Gangupally Village,
Pudur Mandal, R.R. District

And others

... Petitioners

AND

1. The Commissioner, Vikarabad Municipality, Vikarabad
and others

... Respondents

ORDER:

The petitioners, who are eight (8) in number, filed the present writ petition seeking a declaration that the action of the respondents in trying to evict the petitioners from their land admeasuring Acs.1.10 gts., in Survey No.120 of Vikarabad as arbitrary, illegal and violative of Articles 14, 21 and 300-A of Constitution of India, and to direct the respondents to dispose of the appeal filed by the petitioners.

The petitioners claim that they purchased the subject land from its registered owners under sale deed dated 27.7.1998 and have been in possession of the land. According to the petitioners, this land forms part of total extent of Acs.7.24 gts., in Survey No.120 of Vikarabad belonging to Ameena Paiga. Be that as it is, the petitioners allegedly divided the land into plots, effected partition among themselves and are enjoying the land. It appears that they submitted an application on 05.7.2001 seeking permission to construct buildings. The same was rejected on 03.9.2001. Aggrieved by the same, the petitioners filed W.P.No.21444 of 2001. This Court by order dated 15.10.2001 disposed of the writ petition directing Vikarabad Municipality to consider and dispose of the application of the petitioners. Again, the respondents by order dated 29.1.2002 rejected the application of the petitioners for building permission. The petitioners, therefore, filed appeal under Section 345 of A.P. Municipalities Act, 1965 (the Act, for short). In the mean while, it appears that the meeting of the Municipal Council is scheduled to be conducted on 27.10.2005 *inter alia* to consider a proposal to establish children-park in the vacant land in Survey No.120. When the notice of the meeting of the Council was issued on 21.10.2005 containing such agenda, the petitioners filed the present writ petition for the reliefs as noticed hereinabove.

At the stage of admission itself, the Commissioner of Vikarabad Municipality filed counter affidavit. While denying the title of the petitioners and other allegations made

in the affidavit accompanying the writ petition, it is stated that as per the immovable property register for the year 1956, the lands in new Survey No.120 (old Survey Nos.42,44,46 and 48) are recorded as Municipal lands and some portion of the land in Survey No.120 was alienated to Gram Panchayat for establishment of School, Telephone Exchange, Shishumandir, Balbhavan, Mahila Mandal etc and that Municipality itself constructed LIGH quarters as per the approved lay-out in Survey No.120 in 1959 vide T.P. No.1/1959. It is stated that for the land, which was earmarked for public purpose, Smt.Himayathunnisa Begum, petitioners' vendor filed a suit being O.S.No.59 of 1994 for perpetual injunction and when the suit was pending, she executed the sale deed in favour of the petitioners though there was *status quo* order. It is further stated that the said suit was dismissed for default on 17.9.1999. The petitioners herein filed O.S.No.5 of 1999, which was withdrawn subsequently. The allegation that the petitioners are in possession of the land is categorically denied. The petitioners' application was therefore rightly rejected for grant of building permission. The pendency of the appeal filed by the petitioners is admitted.

This Court has heard the lengthy arguments of learned Counsel for the petitioners, Sri A.Sudershan Reddy, and the learned Standing Counsel for Vikarabad Municipality, Sri P.Radha Krishna.

It is well settled that question of title cannot be gone into in the proceedings under Article 226 of Constitution of India. Indeed, as rightly pointed out by the learned Standing Counsel that the vendor of the petitioners or the petitioners themselves earlier filed suits, which were subsequently dismissed. Therefore, this Court is not inclined to go into the question of title, in this writ petition. If the petitioners claim undisputed title, it is for them to approach the civil court and get declaration of their title. Insofar as the rejection of building permission by order dated 29.10.2002 is concerned, under Section 345(1)(c) of the Act, any order of the Commissioner refusing to approve the site for building, an appeal would lie to the Council and therefore, it would be proper if the Council takes up the matter in its next meeting and consider the petitioners' appeal. It is brought to the notice of this Court that on 27.10.2005 the meeting of the Council was held and it was resolved to instal play-toys for the children in Survey No.120 and also construct compound wall. As amount is already sanctioned, this Court is not inclined to grant any order of *status quo* as prayed for by the learned Counsel for petitioners.

The writ petition, with the above observations and directions, is disposed of. No costs.

(V.V.S. RAO,J)

November 07, 2005.

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